

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

LINDA JEAN MATUSZAK,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 471-15
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	
	)	

**ORDER**

This case is before the Court on petitioner's Motion to Vacate Order of Dismissal for Lack of Jurisdiction pursuant to Rule 162<sup>1</sup> filed on January 22, 2016, with attached exhibits. For the reasons summarized below, we will deny petitioner's motion.

On January 7, 2015, petitioner petitioned this Court for review of a final appeals determination dated October 7, 2014, that denies petitioner's request for section 6015 relief for taxable year 2007. On November 10, 2015, respondent filed a Motion to Dismiss for Lack of Jurisdiction alleging that the petition was not timely filed. Petitioner filed a response to respondent's motion on December 3, 2015.

This Court has jurisdiction to review a final appeals determination that denies section 6015 relief when a taxpayer files a petition within 90 days of the date of the final appeals determination. Sec. 6015(e). Because petitioner did not file a petition within 90 days from the date of the final appeals determination, we

---

<sup>1</sup>Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the year at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

granted respondent's motion on December 29, 2015, and dismissed petitioner's case for lack of jurisdiction. Petitioner now requests that we vacate our decision.

The disposition of a motion to vacate lies within the sound discretion of the Court. Vaughn v. Commissioner, 87 T.C. 164, 166-167 (1986). The Court generally does not grant a motion to vacate absent a showing of unusual circumstances or substantial error, e.g., mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or other reason justifying relief. See, e.g., Fed. R. Civ. P. 60(b); Brannon's of Shawnee, Inc. v. Commissioner, 69 T.C. 999 (1978).

Petitioner contends that the 90-day period in section 6015(e)(1)(A) for filing a petition for review of a final appeals determination denying section 6015 relief is not jurisdictional and is subject to equitable tolling. Therefore, petitioner contends that this Court has jurisdiction of petitioner's case but the statute of limitations has expired and equitable tolling could allow the Court to extend the statute of limitations. Petitioner contends that because of recent developments in jurisdictional jurisprudence our decision in Pollock v. Commissioner, 132 T.C. 21 (2009), in which the Court held that section 6015(e) is jurisdictional and is not subject to equitable tolling, should be overruled.

Recently in Guralnik v. Commissioner, 146 T.C. \_\_\_, \_\_\_ (slip op. at 8-13) (June 2, 2016), we considered whether the 30-day period under section 6330(d)(1) in which to file a petition for review of a notice of determination arising under section 6320 and/or 6330 is jurisdictional and is subject to equitable tolling. The taxpayer in Guralnik argued that, although the Court had previously held that section 6330(d)(1) was jurisdictional, recent developments in jurisprudence required us to reconsider our previous holding. Id. We rejected the taxpayer's argument and held that the 30-day period under section 6330(d)(1) is jurisdictional and is not subject to equitable tolling. Id.

Petitioner's arguments are substantially similar to the taxpayer's arguments in Guralnik. As petitioner acknowledges, sections 6330(d)(1) and 6015(e)(1)(A) use similar language and were enacted in the same legislation. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, secs. 3201, 3401, 112 Stat. at 738, 749. Petitioner also acknowledges that sections 6330(d)(1) and 6015(e)(1)(A) must be interpreted similarly. Because section 6015(e) is substantially similar to section 6330(d)(1), we apply our holding in Guralnik to section 6015(e)(1)(A) and we reject petitioner's argument for the reasons stated in Guralnik.

In short, for the reasons articulated in Guralnik the Court declines to overrule Pollock and rejects petitioner's arguments that recent developments in jurisprudence compel a different result. Section 6015(e)(1)(A) is jurisdictional and equitable tolling does not apply. Accordingly, the Court is unable to conclude that any unusual circumstances or substantial error warrants granting petitioners' motion.

Upon due consideration, it is

ORDERED that, petitioner's Motion to Vacate Order of Dismissal for Lack of Jurisdiction, filed January 22, 2016, is denied.

**(Signed) L. Paige Marvel**  
**Chief Judge**

Dated: Washington, D.C.  
July 29, 2016